

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:05-CR-00216-RJC

USA)
)
v.) ORDER
)
QUALO MARTEZ LOWERY (2))
)
_____)

THIS MATTER is before the Court upon motions of the defendant pro se for for a reduction of sentence based on the First Step Act of 2018. (Doc. Nos. 274, 277).

The defendant was found guilty of conspiring to possess with intent to distribute 5 kilograms or more of cocaine and 50 grams or more of cocaine base (Count One) and possessing with intent to distribute cocaine on two different dates (Counts Three and Four). (Doc. No. 110: Jury Verdict at 1-2). Combined with his prior drug trafficking conviction, (Doc. No. 10: 21 U.S.C. § 851 Notice), the statutory range of punishment for Count One was 20 years to life imprisonment.¹ (Doc. No. 192: Presentence Report at 14). At the sentencing hearing, the Court found the defendant to be a Career Offender and sentenced him to 360 months on each count to be served concurrently, the low-end of the advisory range. (Doc. No. 195: Judgment at 2; Doc. No. 206: Sent. Hr'g Tr. at 43-44, 51).

¹ Counts Three and Four were violations of 21 U.S.C. § 841(b)(1)(C) which is not a “covered offense” under the First Step Act. Pub. L. 115-135, § 404(a); Fair Sentencing Act of 2010, Pub. L. 111-220, § 2 (2010).

Under the First Step Act, the Court has discretion to impose a reduced sentence as if the Fair Sentencing Act of 2010 had been in place at the time of the original offense was committed. First Step Act of 2018, Pub. L. 115-135, § 404 (2018). Here, the jury found defendant responsible for 5 kilograms or more of cocaine as part of the conspiracy in Count One. The statutory punishment for that drug type and quantity was not affected by the Fair Sentencing Act, 21 U.S.C. § 841(b)(1)(A)(ii) (2010), resulting in the same the advisory guideline range, USSG §4B1.1. (Doc. No. 279: Supplement to Presentence Report at 2). Accordingly, the defendant does not qualify for a sentence reduction under the First Step Act.

IT IS, THEREFORE, ORDERED that the defendant's motions, (Doc. No. 274, 277), are **DENIED**.

The Clerk is directed to certify copies of this Order to the defendant, the Federal Defender, the United States Attorney, the United States Marshals Service, and the United States Probation Office.

Signed: June 27, 2019



Robert J. Conrad, Jr.
United States District Judge
